



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER PO-2406

Appeal PA-040109-1

Ministry of Education



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of Education (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the Act) for a “copy of [the] entire ISA (Intensive Support Amount) file and all ISA records (including ISA student claim forms for 2000-2001 and any other years) for [the requester’s son, identified by name, student number and the public school he attended].”

The Ministry responded to the request by letter which stated that it was enclosing “the records that contain the information held by the Ministry that responds to your request”. It also stated that the requester “may want to contact the [relevant] school board for further information”. The Ministry also attached to the decision letter a list of eight categories of records. At the top of this list, the introduction reads:

The attached records represent the totality of the Intensive Support Amount (ISA) Level 2 and 3 records held by the Elementary/Secondary Business and Finance Division, which are responsive to the request.

Please note that funding from ISA Level 2 and 3 is not allocated to specific students or used on a strict student-by-student basis. Each board uses its total special education revenue – both Student Per Pupil Amount (SEPPA) and ISA Levels 2 and 3 – to meet the needs of all its students with special needs.

Also note that some of the criteria for ISA Level 2 and 3 changed in each year of the review.

The list then identifies the eight categories of records. Beside each category are listed the responsive records. In this case, all of the responsive records listed are identified as either “not claimed”, “not applicable” or that “the Ministry does not have this information” and that “if it exists, it is kept at the Board”.

Effectively, the result of the Ministry’s decision is that no responsive records exist with the Ministry.

The requester (now the appellant) appealed the Ministry’s decision.

The appellant’s letter of appeal listed a number of items of information which the appellant identified as evidence for ISA claims relating to the appellant’s son at the Ministry. The appellant also identified that the search for responsive records did not appear to include the 2002-2003 school year. In addition, the appellant referred to Ministry guidelines that identify that an ISA Student Claim Form Staff Support Worksheet is to be completed for every child claimed for under ISA and is to be submitted by school board officials to the Ministry.

Furthermore, one of the issues raised by the appellant is a request for a clarification as to what ISA information is kept by the Ministry on each named child. Although this can be categorized as more of a “request for information” rather than access to the record, the Ministry has effectively responded to this request in its representations, by identifying the nature of the information it maintains on each child.

Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the process. I sent a Notice of Inquiry to the Ministry, initially. The Ministry provided representations in response to the Notice of Inquiry. I then sent the Notice of Inquiry, together with a copy of the Ministry's representations (including the attachments), to the appellant. The appellant also provided representations in response, and I shared portions of those representations with the Ministry. The Ministry responded with brief reply representations.

DISCUSSION:

PRELIMINARY MATTERS

As a preliminary matter, the appellant has identified a number of issues which she would like to have addressed in this appeal. For example, the appellant raises issues regarding the propriety of actions of certain identified employees (including employees with the relevant school board), questions about the retirement of an employee, a request for a database review, and a request for a review of the methods used by the Ministry to screen ISA applications. Many of these issues fall outside the scope of my review under the *Act* as to whether the Ministry's search for records was reasonable. Unless these issues directly affect the question of whether the Ministry's search for records was reasonable, they are not addressed in this order.

In addition, the appellant takes the position that the Ministry is, in certain circumstances, entitled to have access to responsive records kept by the school board. The appellant appears to suggest that, even if the Ministry is not currently in possession of responsive records, the Ministry may be entitled to access the records that are with the relevant school board (either under certain identified sections of the *Education Act*, or based on its ultimate responsibility for special education programs and services), and that it could then make an access decision on those records.

In this appeal, the Ministry notified the appellant at the time the request was made that further information may be located at the relevant school board. The appellant has requested responsive records from the school board, and the school board's access decision is being reviewed by this office. In the circumstances, I will not review whether the Ministry may be entitled to access certain school board records, nor whether such access would constitute "custody or control" for the purpose of the *Act*.

REASONABLE SEARCH

Where a requester claims that records or additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [P-624].

Representations

As identified above, the appeal letter (which was shared with the Ministry) listed a number of items of information which the appellant provided as evidence in support of her position that ISA claims relating to the appellant's son existed at the Ministry. The appellant also identified that the search for responsive records did not appear to include the 2002-2003 school year. Furthermore, the appellant referred to Ministry guidelines that identify that an ISA Student Claim Form Staff Support Worksheet is to be completed for every child claimed for under ISA and is to be submitted by school board officials to the Ministry. I referred to the appeal letter in the Notice of Inquiry I sent to the Ministry.

The Ministry's representations

The Ministry responded to the Notice of Inquiry by providing representations identifying the nature of the searches conducted for responsive records, and providing a supporting affidavit by the Director of the Education Finance Branch (EFB) of the Ministry.

The Ministry begins by noting that the Intensive Support Amount (ISA) is a variable amount based on each board's share of students with high needs. The Ministry states that the goal of the ISA is to provide boards with special education funding that responds to the proportion of their students who have high needs, and the Ministry then identifies the different ISA levels.

The Ministry goes on to state:

No personal information about a student is collected by the Ministry unless a student's name has been included on a new claim form submitted by a board. Any personal information collected by the Ministry is used to administer the ISA funding to Boards. These records can be searched by name, school or board.

However, although boards submit claims by student name, ISA funding received by boards is not earmarked for an individual child. That is why the Ministry does not have to collect more than the minimum amount of personal information needed to administer the ISA funding. Any additional personal information would be retained by the boards.

The Ministry also states that the information relating to claims forms is considered to be sensitive personal information, and is housed in and closely controlled by the EFB of the Ministry.

With respect to the specific request resulting in this appeal, the Ministry begins by identifying the steps that were taken when the request was initially received. These steps included:

- referring the request to the Director of the EFB,
- designating an identified senior policy advisor in the EFB and the coordinator of the team in the EFB assigned to work on ISA Levels 2 and 3 as the person responsible for coordinating the search for responsive records,
- confirming the wording of the request and the nature of the information in the Ministry's custody with the Freedom of Information Coordinator, and
- confirming that the search for records was limited to ISA Levels 2 and 3 (based on information received from the appellant).

The Ministry then states:

The ISA analyst also indicated that only if a board sent a claim to the Ministry in the name of a particular student would there be a record in the Ministry database for that student. If a claim had never been submitted, there would be no record.

Following this consultation, [the senior policy analyst] caused a search to be made of all ISA Level 2 and 3 records in the custody of the Ministry. She was assisted in this search by other members of the ISA team. The search revealed that the Ministry did not have any responsive records in its custody.

The Ministry then identifies that, based on information received from the appellant, it was clear that ISA Level 2 was the level about which information and clarification was requested.

With respect to the question raised in the appellant's appeal letter concerning why the search for responsive records did not appear to include the 2002-2003 school year, the Director of the EFB addressed this in his affidavit. He states:

During the 2001-02 Comprehensive review, all claims were reviewed. The ISA Comprehensive review, although called the "2001-02 Comprehensive Review," was actually conducted over two school years, 2001-02 and 2002-03. Boards were able to submit new claims from October 2001 through December 2002."

Thus, when the Ministry searched its database, it included records for the 2002-03 school year.

With respect to the nature of the searches conducted by the Ministry, the Ministry states as follows:

... the Senior Policy Analyst in the EFB and coordinator of the ISA team coordinated the search. Also involved in the search were key members of this small unit, all of whom were intimately familiar with ISA records.

In order to determine whether a responsive record was in the Ministry's custody, these knowledgeable staff members searched the paper and electronic files from ISA Levels 2 and 3 reviews in 1998-99, 1999-00, 2000-01, and 2001-02 Comprehensive Review (including 2001-02 and 2002-03) and 2003-04. These searches included:

- Ministry records of the Toronto District School Board (TDSB) new claim forms, electronic and paper;
- Ministry records of TDSB validation results (record of all claimed and approved claims from 1998-99 to 2003-04), electronic and paper records including individual Validator Reports and composite board result forms; and
- Access electronic database containing *all* records from 2001-02 and 2002-03.

There was no need to search the Oracle database since ... the Oracle electronic database is a subset of the Access electronic database and did not have to be searched in response to the request. The Access database includes all files claimed, whether eligible or not, while the Oracle database includes only eligible files.

If the TDSB had submitted new claim forms for ISA Levels 2 and/or 3 in the name of a particular student, records of these claims would have appeared in a name search of the files described above. ... the Ministry does not have any responsive records. This means that the TDSB did not submit the name of the student who is the subject of the FOI request as a new claim in 2000-01 or any other year for which the Ministry holds ISA records.

The Ministry then summarizes how ISA Level 2 and 3 records are created as follows:

Using the applicable criteria provided in the Ministry publication ISA Guidelines 2001-02 Addendum Summer 2001, ... boards conducted an internal process to gather supporting documentation and make decisions concerning which new claims they would submit to the Ministry for validation.

The Ministry would first collect personal information about an identifiable student when a board submitted a new claim list of the names of students the board had identified as potentially meeting the ISA Levels 2 or 3 criteria.

The Ministry then prepared a validation claim form for each name on a board list. Once a Ministry hired Validator reviewed and validated a board's claim, the Validator recorded the results on a Validator's Report. A copy of the Validator's Report was left with the board and the signed paper original was returned to the

Ministry for filing. The Ministry kept these records to resolve any funding entitlement discrepancies.

.... The search undertaken by ISA staff discovered that the TDSB did not submit the name of the student who is the subject of the FOI request as a new claim in 2000-01 or any other year for which the Ministry has records.

The Ministry also addresses the appellant's position that "an ISA Student Claim Form Staff Support Worksheet [SSW] is to be completed for every child claimed for under ISA and is to be submitted by school board officials to the Ministry". The Ministry identifies when this form was used and for what purposes as follows:

The form appeared in the ISA Guidelines 2000-01 ... and provided a weighted calculation for measuring full time equivalents (FTE) to a particular student for teachers, educational assistants and other staff. Boards used the SSW during the internal process described [in the attached affidavit]. Only the final calculation from the SSW was transferred to the new claim forms that were ultimately submitted to the Ministry.

The Board retained the original SSW. Neither the Ministry nor the Validator collected the SSW or a copy of it. After the 2000 ISA review, the form was no longer used for ISA Levels 2 or 3, and therefore would not be part of a 2001-02 claim for ISA Levels 2 or 3.

With respect to whether responsive records existed in the past but no longer exist, the Ministry states that, during the ISA Comprehensive Review, all ISA Levels 2 and 3 records, both electronic and paper, were organized and gathered together in one location. The Ministry also states that this occurred prior to the date of the request, and that it is not aware of any records having been destroyed.

As identified above, in support of its representations, the Ministry provides an affidavit sworn by the Director of the EFB, detailing the specific information referenced in the representations.

The appellants' representations

I sent a Notice of Inquiry, along with a copy of the Ministry's representations, including the attachments, to the appellant. The appellant provided extensive representations in response.

The appellant begins by identifying the nature of the request, and that it was for "any and all documentation kept by the Ministry regarding ISA claims for our son ... during 2000-01 and any other years for which the Ministry has ISA records and documentation". She states that, in the initial response received from the Ministry, the response indicates that the appellant's son was "not claimed" for ISA for the relevant years, and also that the Ministry's response identified that

it did not have any records relating to the appellant's son, and that any such records, if they exist, are kept by the board.

The appellant states that she appealed the decision on the grounds that she had sufficient evidence in her possession to "make certain" that an ISA claim had been made for her son at some point between 1998 and 2002, and wanted clarification as to what documentation for ISA claims the Ministry in fact possessed, how it was organized, and how searches had been conducted.

The appellant then provides a detailed review of her understanding of how the special education programs and services have been funded over the past few years, and how monies for these programs were allocated by the Ministry to the school boards. She identifies the concerns she has regarding the methods by which the funding was allocated, and the discrepancies and inconsistencies which she believes have been caused by the funding methods. In addition, she seems to acknowledge that, in a number of instances, the Ministry does not in fact possess records. She states "... the Ministry does not in fact possess any records for most of the ... ISA funding which was claimed and received by the TDSB each year ..."

With respect to the specific information relating to her son, the appellant's representations state that, based on her review of the funding process, each school board made ISA claims by submitting a summary chart as well as "an attachment which identifies each student by student number". The appellant then states:

According to the Ministry's response to the Inquiry, no search was made on [the student's] student number or OEN even though one of [his] student numbers was very clearly on our request ...

The appellant then identifies that three different numbers were in use for her son, and she provides the three numbers in her representations.

The Ministry's reply representations

After reviewing the appellant's representations, I decided to share portions of them with the Ministry. In particular, I shared the portions which identified the appellant's concerns that information relating to the child's student number may not have been searched, as well as the three numbers noted by the appellant, with the Ministry.

The Ministry provided brief reply representations in response. In those representations the Ministry states that it conducted a further search for records, and that "the search was carried out on each number provided by the appellant and no records have been found to exist." The Ministry also provides a brief explanation regarding why no records were found, stating that, when boards submitted their ISA claim review forms, the ISA team assigned an individual ISA number for each record. The Ministry identifies that the ISA number was then used by the Ministry for a number of purposes, notwithstanding that some boards maintained their own

numbering system to track their students. However, the Ministry also states that “[i]n the case of this Appeal, since there was no claim made on behalf of this student, no ISA number was assigned.”

Findings

As set out above, where a requester claims that records exist beyond those identified by the Ministry, the issue to be decided is whether the Ministry has conducted a reasonable search for records as required by section 24 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the Ministry’s decision. If I am not satisfied, I may order further searches.

The *Act* does not require the Ministry to prove with absolute certainty that further records do not exist. However, the Ministry must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

Although a requester will rarely be in a position to indicate precisely which records the Ministry has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

The appellant provided extensive representations in support of her position. It is clear that she has spent considerable time and effort in reviewing the process through which ISA funding was allocated to various boards over the past number of years, and has strong views on the methods used by the Ministry. However, that is not the issue under review in this appeal - rather - the issue to be decided is whether the Ministry has conducted a reasonable search for records responsive to the request.

The Ministry has provided extensive and detailed representations regarding the searches conducted for responsive records. These representations include a detailed review of the nature of the records kept by the Ministry, the specific searches conducted for responsive records and the results of those searches, and a detailed supporting affidavit by the Director of the EFB of the Ministry providing more specific information regarding the nature of the searches conducted, who conducted them, and the results of the searches. In its reply representations, the Ministry also identifies that it conducted an additional search for records relating to the various student numbers provided by the appellant, and that the results of that search did not produce any responsive records. The Ministry also provides an explanation as to why no responsive records were located.

Based on the submissions of the Ministry, I am satisfied that it has conducted a reasonable search for records responsive to the appellant’s request. In my view, the Ministry has provided me with the kind of detailed evidence required to demonstrate that it has conducted a reasonable search for the records sought by the appellant.

ORDER:

I find that the Ministry's search was reasonable and dismiss the appeal.

Frank DeVries
Adjudicator

July 8, 2005